



WV Network for Educational Telecomputing

837 Chestnut Ridge Road
Morgantown, WV 26505

Voice: (304) 293-5192
Fax: (304) 293-5540

Purchase Order

46001

Please show this number on all packages and documents related to this order.

P Doc No.: P25563

Page #:

Vendor:
Blackboard Finance Operations
650 Massachusetts Avenue NW, 6th FL
Washington DC 20001

Ship to:
WVNET
837 Chestnut Ridge Road
Morgantown, WV 26505

Invoice to:
Accounts Payable
WVNET
837 Chestnut Ridge Road
Morgantown, WV 26505

FEIN: 522-081-178

Date	Buyer	Ship Via	F. O. B.	P. O. Date	Terms	Delivery Date Required
08/14/2015	GK		Destination	07/01/2015	Net 30	

Item	Quantity	U/M	Description	Unit Price	Extended Price
			<p>OPEN END CONTRACT</p> <p>Blackboard License & Service Agreement for WVNET Member Institutions</p> <p>Per the attached Exhibit A.</p> <p>Effective : July 1, 2015 – June 30, 2016</p>		

AUTHORIZED AGENT: Greg Kidder 304-293-5192	DISCOUNT	
AUTHORIZED SIGNATURE:  8/17/15	ADDL. CHARGES	
ATTORNEY GENERAL: (if required)	PURCHASE ORDER TOTAL	Open-end

ACCOUNTING INFORMATION:

This order is tax exempt. Exemption #:550571237



Blackboard

**BLACKBOARD LICENSE AND SERVICES AGREEMENT
COVER PAGE**

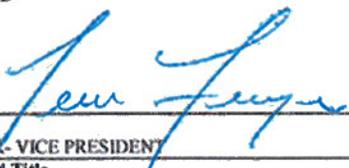
The attached documents describe the relationship between Blackboard and the Customer identified below. The documents attached to this cover page will consist of the Blackboard System Wide Master Terms Agreement between Blackboard and West Virginia Network ("WVNet" or "Customer") on behalf of the Member Institutions listed in Exhibit A, and one (1) or more Order Form describing and setting forth detail about that relationship, depending upon the particular software and/or services Blackboard will provide to the Customer.

This License and Services Agreement includes this cover page, the attached pricing summary and Master Terms, all Schedules and Order Form that are attached to such Master Terms and are separately executed by the Parties. This Agreement, including the attached Master Terms, will become effective when this cover page is executed by authorized representatives of both Parties.

CUSTOMER INFORMATION:			
Name/Company:	West Virginia Network for Education on behalf of its Member Institutions as indicated in Exhibit A	Principal Contact Person:	Chief Procurement Officer
Fax:		Phone:	304/293-5192
Address:	837 Chestnut Ridge Road Morgantown, WV 26505-2704 USA		
Billing Contact:		Title:	
Address:	837 Chestnut Ridge Road Morgantown, WV 26505-2704 USA		
Phone:		Email Address:	
Fax:			

The parties agree that this Agreement does NOT replace Customer's existing agreement for its Member Institutions. Such, if any existing shall continue until their either not renew or Customer and Blackboard agree to revise.

IN WITNESS WHEREOF, the parties hereto have executed this cover page as of the date written below.

BLACKBOARD	CUSTOMER: West Virginia Network for Education on behalf of Its Member Institutions
	
Signature	Signature
TESS FRAZIER- VICE PRESIDENT	Gregory A. Kidder
Print Name and Title	Chief Procurement Officer
Date:	Date: 11/17/15



Blackboard

BLACKBOARD MASTER TERMS

Blackboard offers software and services that are useful for a range of educational purposes, from development of course websites to development of an entire online campus, and Blackboard also offers technology that allows institutions to establish and manage accounts for a stored value card system and security access system. Customer wishes to use such Blackboard software, services and other technology to enhance its own educational programs, and Blackboard is willing to grant to Customer a license for this purpose in accordance with the terms and conditions contained in this Agreement.

AGREEMENT

In consideration of the following mutual promises and agreements, the Parties agree as follows:

1. SCOPE OF AGREEMENT

1.1 Exhibits and Schedules. These Master Terms describe the general terms by which Customer may license Software and purchase Services and/or Equipment (each as defined below) from Blackboard as set forth in any Order Form or Schedule (as defined below). The pricing related to the license of software and the purchase of services is outlined in the Pricing Summary of the Order Form and the specific terms related to the license of Software or purchase of Services and/or Equipment are described in the appropriate Software Schedules or Service Schedules, and Exhibits to such Schedules (collectively referred to as "Schedules"). Order Form may be added or deleted from time to time by the agreement of the parties, but Customer acknowledges that it only has rights to use Software or receive Services/Equipment to the extent provided pursuant to one or more applicable Order Form which has been executed and remains in force.

1.2 Order of Precedence. In the event a conflict arises between these Master Terms and the provisions of any Order Form or Schedule, these Master Terms will govern unless the relevant Schedule expressly provides otherwise. No term or provision set forth or cross-referenced in any purchase order or payment documentation will be construed to amend, add to, or supersede any provision of this Agreement. This means that the terms and conditions of any purchase order or payment documentation will not be binding upon either Party.

1.3 Authority. Customer agrees that it shall require each Member Institution listed in Exhibit A to abide by the terms and conditions of this Agreement and the applicable Order Form as signed by WVNet on behalf of the Member Institution.

1.4 Ordering Procedure. Blackboard in fulfilling its obligations under the Blackboard System Wide Agreement may issue Order Forms to Customer for execution on behalf of its Member Institutions. The following describes the procedures to be used for the requesting of Blackboard products and issuing of Blackboard Order Forms against this Agreement.

Customer, under the terms of the Blackboard System Wide Agreement

- (c) Description of the product desired
- (d) Billing contact information
- (e) Technical Contact Information
- (f) Any information relevant and deemed necessary for the purchase of the Blackboard product.

2. DEFINITIONS

2.1 "Agreement" means the License and Services Agreement including, the Cover Page, the Pricing Summary and all Order Form (including any and all Schedules and exhibits to Schedules) attached to these Master Terms, as amended from time to time.

2.2 "Authorized End User" means an individual authorized by the Customer to use or otherwise access an Offering from time to time in the manner set forth in this Agreement.

2.3 "Available Date" means, with respect to any particular Software, Equipment, or Support Services, the date upon which the relevant Software

or Support Services are made available to Customer pursuant to the terms of the relevant Order Form and Schedule, regardless of whether Customer utilizes the Software, Equipment, or Support Services and for Equipment, the date a valid Purchase Order is accepted by Blackboard.

2.4 "Blackboard" means Blackboard Inc., a Delaware corporation with its principal office and place of business at 650 Massachusetts Avenue, NW, 1st floor, Washington, DC 20001 U.S.A., including its wholly owned subsidiaries.

2.5 "Blackboard Property" means all materials, including, but not limited to any computer software (in object code, source code form or as a hosted solution, and including, without limitation, all interfaces), script, programming code, data, database schema, web use statistics, information or HTML script, design elements, formulas, documentation, templates, formatting, CGIs, Javascripts, PL/SQL coding, other applications, content, software or other technology made, conceived, developed or provided by Blackboard or its suppliers and any trade secrets, know-how, methodologies and processes related to Blackboard's products or services, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights therein and any Derivative Works thereof.

2.6 "Confidential Information" means any non-public information disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential. Without limiting the generality of the foregoing, Confidential Information will be deemed to include, without limitation, information about a Party's business, vendors, customers, end users' grades or other educational information, end users' financial information, transaction data, products, services, employees, finances, costs, expenses, financial or competitive condition, policies, and practices, computer software programs and programming tools and their respective design, architecture, modules, interfaces, databases and database structures, non-literal elements, capabilities and functionality, source code and object code, as well as research

by a third party, and any other non-public information that does or may have economic value by reason of not being generally known.

2.7 "Customer" means the customer identified on the cover page to which these Master Terms are attached.

2.8 "Customer Content" means any data, information, graphics or other media files or other content provided by Customer or any end user through use of an Offering.

2.9 "Customer Property" means all graphic user interface, text, images, music, designs, products, computer programs, drawings, content, end user information, documentation, notes, development aids, technical documentation, information and other materials provided by Customer to Blackboard for use in connection with the Offering, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights therein. Customer Property includes any third party software provided by, or made available at the request of, Customer for use in connection with any Offering.

2.10 "Customer Content" means any data, information, graphics or other media files or other content, including, but not limited to, course materials, provided by or for Customer or any end user of the Software through use of the Software, excluding any portion of the Software or Documentation.

2.11 "Derivative Works" shall mean a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which the preexisting work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a "derivative work". The term Derivative Works shall not include and Blackboard shall not obtain any rights with respect to any Confidential Information of the Customer or any Customer-developed content or other Customer materials that are used in conjunction with the Blackboard Materials but that are not based upon or derived from the Blackboard Materials or any portion thereof.

2.12 "Designated Server Site" means the physical location where the Software will be installed, either a location operated by Customer, or hosted by Blackboard.

2.13 "Documentation" means, with respect to any particular Software or Equipment, any applicable standard end user specifications and/or operating instructions provided by Blackboard for such Software and/or Equipment, which may be amended from time to time. Documentation does not include any sales or marketing materials.

2.14 "Effective Date" means the date upon which both Parties have executed the cover page to which these Master Terms are attached.

2.15 "Equipment" means any hardware and/or firmware provided by Blackboard to Customer pursuant to any Schedule, including, without limitation, hardware and/or firmware related to the stored value card system and security access system. Unless otherwise specified, Equipment shall be provided to Customer upon receipt and acceptance by Blackboard of a valid Purchase Order.

2.16 "Master Terms" means these Blackboard Master Terms.

2.17 "Order Form" a document executed by both parties which lists items to be purchased and/or licensed by Customer as well as other information related to such items, each of which is incorporated into this Agreement.

2.18 "Party" means either Blackboard or Customer.

2.19 "Party" means either Blackboard or Customer.

2.20 "Professional Services" means any professional services provided by Blackboard to Customer.

2.21 "SaaS Service" means software provided by Blackboard as a Blackboard-hosted solution.

2.20 "Services" means any services provided by Blackboard to Customer, including, without limitation, any SaaS Service.

2.21 "Software" means the object code version of the Blackboard Learn™, Blackboard, Transact™ or Blackboard Connect™ software as described on the applicable Software Schedule(s).

2.22 "Test Copy" shall mean one (1) copy of the Software for use solely

informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information. Each Party acknowledges that it has all requisite authority under applicable laws to provide the other Party with access to Confidential Information. Each Party receiving Confidential Information further agrees that it will not use such Confidential Information except for the purposes set forth in this Agreement. Each Party receiving Confidential Information shall treat such information as strictly confidential, and shall use the same care to prevent disclosure of such information as such Party uses with respect to its own confidential and proprietary information, provided that in any case it shall not use less than the care a reasonable person would use under similar circumstances.

4.2 Notice. Subject to the West Virginia Freedom of Information Act, the receiving Party will promptly notify the disclosing Party in the event the receiving Party learns of any unauthorized possession, use or disclosure of the Confidential Information and will provide such cooperation as the disclosing Party may reasonably request, at the disclosing Party's expense, in any litigation against any third parties to protect the disclosing Party's rights with respect to the Confidential Information.

4.3 Terms of Agreement. Subject to the West Virginia Freedom of Information Act, except as otherwise provided by law, neither Party shall disclose the terms of the Agreement to any third party; provided, however, that either Party may disclose the terms of this Agreement to its professional advisers, or to any potential investor or acquirer of a substantial part of such Party's business (whether by merger, sale of assets, sale of stock or otherwise), provided that such third party is bound by a written agreement or legal duty on terms at least as strict as those set out in this Section 4 to keep such terms confidential.

4.4 Exceptions to Confidential Treatment. Notwithstanding the foregoing, the preceding provisions of this Section 4 will not apply to information that: (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Each Party may disclose Confidential Information to the limited extent necessary (a) to comply with the order of a court of competent jurisdiction or other governmental body having authority over such Party, provided that the Party making the disclosure pursuant to the order will first have given notice to the other Party and made a reasonable effort to obtain a protective order; (b) to comply with applicable law or regulation requiring such disclosure; or (c) to make such court filings as may be required to establish a Party's rights under this Agreement.

4.5 Contact Information. Customer hereby authorizes Blackboard to include and use individual Customer contact information (i.e., primary contact, system administrator, billing contact) in contact lists for emails, mailings, and faxes from Blackboard relating to Blackboard-provided products and services, support, product and service matters, newsletters, user

FOR THE PURPOSES OF INSTALLING THE SOFTWARE. LICENSE TO USE UNPUBLISHED SOURCE CODE

3. ATTENTION OF SCHEDULES

3.1 Provision by Blackboard. Blackboard agrees to make available and/or provide, as applicable, the Software, Equipment or Services required by any Schedule duly executed, attached and incorporated into this Agreement.

3.2 No Further Obligations. Except as required by any applicable Schedule or as otherwise agreed between the Parties, Customer acknowledges that Blackboard has no obligation under this Agreement to provide Software, Equipment or Services of any nature to Customer.

4. CONFIDENTIALITY

4.1 Nondisclosure and Nonuse. Subject to the West Virginia Freedom of Information Act, each Party will keep the other Party's Confidential Information confidential. Specifically, each Party receiving Confidential Information agrees not to disclose such Confidential Information except to those directors, officers, employees and agents of such Party (i) whose duties justify their need to know such information and (ii) who have been clearly

distribute the contact information except as explicitly set forth above.

4.6 Other Rights. Customer hereby grants to Blackboard the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the applicable Software in Blackboard's promotional materials. Blackboard agrees to discontinue such use within fourteen (14) days of Customer's written request.

5. TERM; TERMINATION

5.1 Term. This Agreement shall commence as of the Effective Date and shall continue in effect until either: (i) the expiration of the minimum term, as specified on the Cover Sheet, or (ii) the expiration or termination of all Order Forms, whichever occurs later.

5.2 Termination for Breach. In the event that either Party materially breaches any obligation, representation or warranty under this Agreement, the non-breaching Party may terminate this Agreement in its entirety, or, at the non-breaching Party's option, it may terminate solely the relevant Order

Form pursuant to which such breach has occurred, provided in either case that such breach has not been corrected within thirty (30) days after receipt of a written notice of such breach. Without limiting the foregoing, either Party may terminate this Agreement immediately upon written notice to the other Party in the event the other Party materially breaches the provisions of Section 4 or the license usage restrictions in any Software Schedule.

5.3 Termination for Insolvency. Without prejudice to any other available remedies, either Party may terminate this Agreement immediately upon written notice if: (i) the other Party becomes insolvent, files for relief under any bankruptcy law, or makes an assignment for the benefit of its creditors generally or has a liquidator or a receiver appointed over a substantial part of its business or assets or commences to be wound up (other than for the purposes of a solvent amalgamation or reconstruction) or (ii) any other circumstances arise in any jurisdiction which entitle a Court or a creditor to appoint a liquidator, receiver, administrative receiver or administrator or equivalent officer or make a winding up order in relation to such Party.

5.4 Effect of Termination. Upon termination of this Agreement, all Order Forms shall automatically and immediately terminate, and all licenses granted under this Agreement shall immediately cease. Upon termination, Customer will immediately discontinue all use of materials licensed under this Agreement, and will pay to Blackboard all amounts due and payable hereunder. Each Party (i) will immediately cease any use of the other Party's Confidential Information; (ii) will delete any of the other Party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries; and (iii) will return to the other Party or, at the other Party's option, destroy, all copies of the other Party's Confidential Information then in its possession. Without limiting the foregoing, upon termination of any Order Form (including upon termination of this Agreement in its entirety), the provisions of such Order Form regarding the effect of such Order Form's termination shall also apply.

5.5 Survival. The termination or expiration of the Agreement shall not relieve either Party of any obligation or liability accrued hereunder prior to or subsequent to such termination, nor affect or impair the rights of either Party arising under the Agreement prior to or subsequent to such termination or expiration, except as expressly provided in this Agreement. Without limiting the foregoing, the provisions of Sections 1, 2, 4, 5.4, 5.5, 6, 7, 8 and 9 of these Master Terms shall survive the termination of this Agreement for any reason.

6. FEES; EXPENSES

6.1 Fees; Payments. In consideration for Blackboard's performance under this Agreement, Customer agrees to pay Blackboard all fees required by the Order Form, as applicable, which fees will be due in accordance with the provisions of the relevant Order Forms, but in no event later than thirty (30) days after the date of an invoice from Blackboard. Blackboard expressly reserves the right to change the fees payable under any Order Form with respect to any renewal of such Order Form upon expiration of its then-current term. Customer will pay all fees in U.S. dollars. Payments shall be sent to the address indicated on the invoice.

6.2 Late Fees. Upon the 61st day from the date of invoice for any

Blackboard shall have the right, at its expense, to audit Customer's use of the Software upon not less than seven (7) days' advance notice. Any such audit shall be during Customer's normal business hours and shall not be made more frequently than once every twelve months, provided that if any such audit reveals a material breach of this Agreement, Blackboard may conduct such audits on a quarterly basis until such audits confirm that the relevant breach has been cured. The cost of any such audit shall be borne by Blackboard unless the audit reveals that Customer knowingly has unpaid fees due under this Agreement in excess of 5% of the total owed for any calendar year, in which case Customer shall, in addition, reimburse to Blackboard the reasonable costs of conducting the audit.

6.4 Taxes. The fees hereunder do not include any sales, use, excise, import or export, value-added or similar tax or interest, or any costs associated with the collection or withholding thereof, or any government permit fees, license fees or customs or similar fees levied on the delivery of any Software or Equipment or the performance of Services by Blackboard to

Customer. Customer will be responsible for payment of such applicable sales, use, excise, import or export, value-added or similar tax or interest at point of sale. All payments due under this Agreement shall be made without any deduction or withholding, unless such deduction or withholding is required by any applicable law of any relevant governmental revenue authority then in effect. If Customer is required to deduct or withhold, Customer will promptly notify Blackboard of the requirement, pay the required amount to the relevant governmental authority, provide Blackboard with an official receipt or certified copy or other documentation acceptable to Blackboard evidencing payment, and pay to Blackboard, in addition to the payment to which Blackboard is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Blackboard equals the full amount Blackboard would have received had no such deduction or withholding been required. If Customer is exempt from any such taxes or fees, then such taxes or fees shall not be charged to Customer upon Blackboard's receipt of a copy of Customer's tax exemption certificate or number.

6.5 Expenses. Except as provided in these Master Terms or any Order Form or Schedule, each party will be responsible for its own expenses incurred in rendering performance under this Agreement, including, without limitation, the cost of facilities, work space, computers and computer time, development tools and platforms, utilities management, personnel and supplies.

6.6 Purchase Orders. Customer agrees that if its internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due to Blackboard, it will timely issue such purchase order and inform Blackboard of the number and amount thereof. Customer agrees that the absence of a purchase order, other ordering document or administrative procedure may not be raised as a defense to avoid or impair the performance of any of Customer's obligations under this Agreement, including payment of amounts owed to Blackboard.

7. DISCLAIMERS AND REMEDIES. THE FOLLOWING PARAGRAPHS OF THIS SECTION 7 ARE IMPORTANT LEGAL LANGUAGE. PLEASE READ THESE PARAGRAPHS CAREFULLY, AS THEY LIMIT BLACKBOARD'S LIABILITY TO CUSTOMER.

7.1 Disclaimer of Warranty. EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN ANY ATTACHED ORDER FORM(S): (A) THE SOFTWARE, EQUIPMENT AND ALL PORTIONS THEREOF, AND ANY SERVICES ARE PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY LAW, BLACKBOARD AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY, MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND/OR QUIET ENJOYMENT; (B) NEITHER BLACKBOARD NOR ITS LICENSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE SOFTWARE WILL MEET ANY

SOFTWARE; AND (C) BLACKBOARD AND ITS LICENSORS MAKE NO GUARANTEE OF ACCESS TO OR OF ACCURACY OF THE CONTENT CONTAINED IN OR ACCESSED THROUGH THE SOFTWARE.

7.2 Limitations of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL BLACKBOARD OR ITS LICENSORS BE LIABLE TO CUSTOMER FOR ANY OF THE FOLLOWING TYPES OF LOSS OR DAMAGE ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE, EQUIPMENT OR SERVICES, WHETHER OR NOT BLACKBOARD WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE (A) ANY LOSS OF BUSINESS, CONTRACTS, PROFITS, ANTICIPATED SAVINGS, GOODWILL OR REVENUE; (B) ANY LOSS OR CORRUPTION OF DATA OR (C) ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION,

SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES). IN NO EVENT SHALL BLACKBOARD'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THIS AGREEMENT FOR THE PARTICULAR SOFTWARE, EQUIPMENT AND/OR SERVICE WITH RESPECT TO WHICH THE RELEVANT CLAIM AROSE DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

7.3 Liability Not Excluded. Nothing in this Section 7 excludes or limits the liability of Blackboard to the Customer for death or personal injury caused by the negligence of Blackboard or any other liability which cannot be excluded by law.

7.4 Essential Basis. The Parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Section 7 form an essential basis of this Agreement, and that, absent any such disclaimers, exclusions or limitations of liability, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different.

8. INFRINGEMENT

8.1 Blackboard Infringement Obligations. If any third party brings a claim against Customer alleging that the use of the Blackboard-manufactured Software or Equipment authorized under this Agreement infringes: (1) a U.S. or European patent issued prior to the Effective Date; or (2) a copyright under applicable law of any jurisdiction Customer must promptly notify Blackboard in writing and make no admission in relation to such alleged infringement. In connection with any such claim and provided that Customer has promptly fulfilled all of the foregoing obligations and is not in material breach of the Agreement, Blackboard shall indemnify, and, at its own expense and option: (i) defend and settle such claim, (ii) procure Customer the right to use the Software or Equipment, (iii) modify or replace the Software or Equipment to avoid infringement; or (iv) refund the applicable fee paid for the current term. In the event that Blackboard exercises option (i) above, it shall have the sole and exclusive authority to defend and/or settle any such claim or action, provided that Blackboard will keep Customer informed of, and will consult with any independent legal advisors appointed by Customer at Customer's own expense regarding the progress of such defense.

8.2 Exceptions. Blackboard shall have no liability to Customer under Section 8.1 or otherwise for any claim or action alleging infringement or violation of applicable privacy or publicity laws based upon: (i) any use of the Software or Equipment in a manner other than as specified by Blackboard; (ii) any combination of the Software or Equipment with other products, equipment, devices, software, systems or data not manufactured by Blackboard (including, without limitation, any software produced by

8.3 Customer Infringement Obligations. Customer shall, at its own expense, indemnify and, at Blackboard's option, defend Blackboard against any losses, damages or expenses (including, without limitation, reasonable attorneys' fees) arising from any claim, suit or proceeding brought by a third party against Blackboard arising out of a Customer Matter and shall pay any damages finally awarded or settlement amounts agreed upon to the extent based upon a Customer Matter (any of the foregoing indemnifiable matters, each a "Blackboard Claim"), provided that Customer will not settle any Blackboard Claim unless such settlement completely and forever releases Blackboard with respect thereto or unless Blackboard provides its prior written consent to such settlement. Blackboard agrees (i) to provide Customer with prompt written notice of any Blackboard Claim and (ii) to provide such assistance as Customer may reasonably request, at Customer's expense, in order to settle or defend any such Blackboard Claim.

8.4 Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF

EACH PARTY, AND THE EXCLUSIVE REMEDY OF EACH PARTY WITH RESPECT TO CLAIMS BY ANY THIRD PARTY ALLEGING INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT.

9. MISCELLANEOUS MATTERS

9.1 Severability. Should any term or provision of this Agreement be finally determined by a court of competent jurisdiction to be void, invalid, unenforceable or contrary to law or equity, the offending term or provision shall be construed (i) to have been modified and limited (or if strictly necessary, deleted) only to the extent required to conform to the requirements of law and (ii) to give effect to the intent of the Parties (including, without limitation, with respect to the economic effect of the Agreement), and the remainder of this Agreement (or, as the case may be, the application of such provisions to other circumstances) shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

9.2 Conflict Resolution. Except with respect to controversies or claims regarding either Party's Confidential Information or proprietary rights under this Agreement, in the event any controversy or claim arises in connection with any provision of this Agreement, the Parties shall try to settle their differences amicably between themselves by referring the disputed matter to their respective designated representatives for discussion and resolution. Either Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and if such representatives are unable to resolve such dispute within thirty (30) days of initiating such negotiations, either Party may seek the remedies available to such Party under law. Notwithstanding the foregoing, nothing in this Section 9.2 will be construed to limit either Party's rights under Sections 5 and 9.6.

9.3 Governing Law. This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of West Virginia without reference to its conflicts of law provisions. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

9.4 Modification and Waiver. No modification, amendment, supplement, or other change to this Agreement, including, without limitation, changes to any Schedule will be effective unless set forth in writing and signed by duly authorized representatives of Blackboard and Customer. No waivers under this Agreement will be effective unless expressly set forth in writing and signed by a duly authorized representative of the Party against whom enforcement thereof is sought. The failure of either Party to insist upon strict performance of any provision of this Agreement, or to exercise any right provided for herein, shall not be deemed to be a waiver of such provision or right with respect to subsequent claims (unless expressly so stated in a valid amendment or waiver), and no waiver of any provision or right shall affect the right of the waiving Party to enforce any other provision or right herein.

9.5 Assignment. Neither Party shall be entitled to assign this Agreement or its rights or obligations under this Agreement, whether voluntarily or by operation of law, except with the written consent of the other Party; provided, however, that either Party may assign this Agreement without the consent of the other Party to any entity that is the successor corporation in any merger

9.6 Remedies. The Parties agree that any breach of this Agreement would cause irreparable injury for which no adequate remedy at law exists; therefore, the Parties agree that equitable remedies, including without limitation, injunctive relief and specific performance, are appropriate remedies to redress any breach or threatened breach of this Agreement, in addition to other remedies available to the Parties. All rights and remedies hereunder shall be cumulative, may be exercised singularly or concurrently and shall not be deemed exclusive except as provided in Sections 5, 7 and 8. If any legal action is brought to enforce any obligations hereunder, the prevailing Party shall be entitled to receive its legal fees, court costs and other collection expenses, in addition to any other relief it may receive.

9.7 Notices. Any notice or communication permitted or required hereunder shall be in writing and shall be delivered in person or by courier, sent by facsimile, or mailed by certified or registered mail, postage prepaid, return receipt requested, and addressed as set forth above or to such other

address as shall be given in accordance with this Section 9.7, and shall be effective upon receipt.

9.8 Force Majeure. Except with regard to payment obligations, neither Party will be responsible for any failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or inability to obtain any export or import license or other approval or authorization of any government authority.

9.9 U.S. Government Users. The following applies to any end user that is a U.S. Government entity: Each of the components that comprise the Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth herein. Contractor/manufacturer is Blackboard Inc., 650 Massachusetts Avenue, NW, 1st floor, Washington, DC 2001 All rights not specifically granted in this Agreement are reserved by Blackboard.

9.10 Export Control. Customer shall not export or allow the export or re-export the Software, any components thereof or any Confidential Information of Blackboard without the express, prior, written consent of Blackboard and except in compliance with all export laws and regulations of the U.S. Department of Commerce and all other U.S. agencies and authorities, including without limitation, the Export Administration Regulations of the U.S. Department of Commerce Bureau of Export Administration (as contained in 15 C.F.R. Parts 730-772), and, if applicable, relevant foreign laws and regulations.

9.11 Relationship. Blackboard and Customer are independent contracting parties. This Agreement shall not constitute the Parties as principal and agent, partners, joint venturers, or employer and employee.

9.12 Employment. Customer hereby agrees that during the Term, Customer will not, except with prior written approval of Blackboard, directly or indirectly hire (including hiring as an independent contractor) or attempt to solicit for hire, or encourage to end their relationship with Blackboard, any persons who are employed by Blackboard or have been employed by Blackboard at any time within one year preceding such attempts to hire or solicit for hire. For purposes of this Agreement, "Blackboard" includes Blackboard Inc. and its subsidiaries.

9.13 Entire Agreement. This Agreement and Exhibit(s), constitutes the entire, full and complete Agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and this Agreement prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the Parties relating to its subject matter. This means that Customer may not and should not rely on any sales or marketing materials provided to it by Blackboard. Blackboard's only obligations to Customer related to the subject matter of this Agreement are set forth in this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall

TERMS

EXHIBIT A
WVNET MEMBER INSTITUTIONS

The Parties Agree that the Member Institution List indicated below may be modified by written agreement of both Parties.

Public Institutions

Bluefield State College
Concord University
Fairmont State University
Glennville State College
Marshall University
Potomac State College of WVU
Shepherd University
West Liberty University
WV School of Osteopathic Medicine
West Virginia State University
West Virginia University
WVU Institute of Technology
WVNET (central site)

Community and Technical Colleges

Blue Ridge Community and Technical College
Eastern West Virginia Community and Technical College
Jackson County Center of WVU at Parkersburg
Bridge Valley Community and Technical College
Mountwest Community and Technical College
New River Community and Technical College
Pierpont Community and Technical College
Southern West Virginia Community and Technical College
West Virginia Northern Community College
West Virginia University at Parkersburg

Private Institutions

Alderson-Broaddus College
Appalachian Bible College
Bethany College
The College of West Virginia
Davis & Elkins College
Ohio Valley College
Salem-Teikyo University
The University of Charleston
West Virginia Wesleyan College
Wheeling Jesuit University

West Virginia Department of Health and Human Resources
K-12 Schools

**EXHIBIT B
WVNET PRICE LIST**

The following pricing shall be valid for a period of two (2) years after Effective Date of the Master Terms to which this is attached.

COLLABORATE FEES

Collaborate – IM (Instant Messaging)	WVNET Price
1-2000 FTE	\$ 13,440.00
2001-4000 FTE	\$ 19,320.00
4001-8000 FTE	\$ 25,900.00
8001-15000 FTE	\$ 33,740.00
15001-25000 FTE	\$ 41,020.00
25001-50000 FTE	\$ 55,160.00

Collaborate – WC (Web Conferencing)	WVNET Price
1-2000 FTE	\$ 24,640.00
2001-4000 FTE	\$ 35,497.00
4001-8000 FTE	\$ 47,509.00
8001-15000 FTE	\$ 61,754.00
15001-25000 FTE	\$ 75,075.00
25001-50000 FTE	\$ 101,024.00

Collaborate – VA (Voice Authoring)	WVNET Price
1-2000 FTE	\$ 6,720.00
2001-4000 FTE	\$ 9,660.00
4001-8000 FTE	\$ 12,950.00
8001-15000 FTE	\$ 16,870.00
15001-25000 FTE	\$ 20,510.00
25001-50000 FTE	\$ 27,580.00

Collaborate Services **\$17,000.00**

Includes:

- Blackboard Collaborate Project Management
- Blackboard Collaborate System Configuration & Integration Health Check Workshop
- Blackboard Collaborate Technical Services SAS Essentials Workshop
- Blackboard Collaborate Technical Services SAS Advanced Workshop
- Bb Collaborate All Modules Getting Started Service
- Getting Started Implementation for Blackboard Collaborate Web Conferencing and Blackboard IM
- Getting Started Implementation for Blackboard Collaborate Web Conferencing and Voice Authoring

Getting Started Learning Services for Blackboard Collaborate Web Conferencing

ANALYTICS FEES

Analytics for Learn (Annual)	WVNET Price
1-2000 FTE	\$ 17,430.00
2001-4000 FTE	\$ 22,260.00
4001-8000 FTE	\$ 27,160.00
8001-15000 FTE	\$ 33,110.00
15001-25000 FTE	\$ 37,800.00
25001-50000 FTE	\$ 42,910.00

Analytics for Learn- Services	WVNET Price
SIS Supported (Banner)	\$45,150.00

Non SIS Support (Non Banner)	\$51,600.00
Pyramid Services	\$13,760.00

Outcomes Assessment*	WVNET Price
1-2000 FTE	\$ 13,230.00
2001-4000 FTE	\$ 16,940.00
4001-8000 FTE	\$ 21,630.00
8001-15000 FTE	\$ 26,390.00
15001-25000 FTE	\$ 31,500.00
25001-50000 FTE	\$ 37,590.00

Outcomes Assessment Services	WVNET Price
All FTEs	\$40,000.00

Customer: West Virginia Network for Education on behalf of its Member Institutions

EXHIBIT C
STATE APPROVED WV-96

AGREEMENT ADDENDUM FOR SOFTWARE
Between West Virginia Network & Blackboard

In the event of conflict between this Agreement Addendum and the Agreement, this Agreement Addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - ~~Any references to prepayment are deleted.~~ Fees for software licenses, subscriptions, or maintenance are payable annually in advance. Payment for services will be in arrears. *Payment will be due Net 30 from the date of an accurate invoice.*
6. **INTEREST** - Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** - Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.

10. **ASSIGNMENT** - Any provision limiting the Agency's right to obtain similar services or

assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.

12. **ASSIGNMENT** - ~~Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor. Vendor shall obtain the written consent of Agency prior to assigning the agreement. Neither party may assign this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld.~~

13. **LIMITATION OF LIABILITY** - ~~The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision in the agreement limiting the Vendor's liability for direct damages is hereby deleted. Vendor's liability under the agreement shall not exceed three times the total value of the agreement. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property. IN NO EVENT SHALL BLACKBOARD'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO~~

THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THREE TIMES THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THIS AGREEMENT FOR THE PARTICULAR SOFTWARE, EQUIPMENT AND/OR SERVICE WITH RESPECT TO WHICH THE RELEVANT CLAIM AROSE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY.

14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination. In such event, Agency will not be entitled to a refund of any software license, subscription or maintenance fees paid.

15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.

16. **RENEWAL** - Any reference to automatic renewal is deleted. The agreement may be renewed only upon mutual written agreement of the parties.

17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.

18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.

19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.

20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.

21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

WEST VIRGINIA NETWORK

VENDOR

Signed: *Gregory A. Kidder*
Gregory A. Kidder

Title: *Chief Procurement Officer*

Date: *WVNET 8/14/15*

Signed: *Tom Feys*

Title: *VP- Contracts*

Date: *8/13/2015*

WV-96A
REV. 12/12

Approved as to form prior to signature this 5th day of August, 2015
Patrick Morrisey Attorney General

By: J. Robert Leslie
James R. Leslie, Senior Deputy Attorney General

**EXHIBIT C
SAMPLE BLACKBOARD ORDER FORM**



Blackboard

This Blackboard Order Form ("Order Form") by and between Blackboard (as defined below) and The Member Institution - _____ ("Customer") details the terms of Customer's use of the products and services set forth below ("Product and Pricing Summary"). This Order Form, together with the Blackboard System Wide Master Terms Agreement between Blackboard and WVNET on behalf of its Member Institutions, dated _____ which is incorporated by this reference, form the entire agreement between the parties in respect of the products and services set forth in the Product and Pricing Summary. Notwithstanding anything to the contrary in any purchase order or other document provided by Customer, any product or service provided by Blackboard to Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form and the Blackboard Master Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute the Agreement on behalf of Customer or Blackboard, as applicable.

In consideration of the promises set forth herein, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

A. Product and Pricing Summary

QTY	Product Name	Product or Service Description	Initial Term Fees (USD)
1	TBD	TBD	TBD
TOTAL:			TBD

B. Term

- Initial Term:** Unless otherwise specified in the Product or Service Description above, the Initial Term shall be ___ year following the Effective Date.
- Renewal:** Unless otherwise specified in the Product or Service Description above, this Order Form shall be renewed automatically for successive periods of one (1) year (each a "Renewal Term") after the expiration of the Initial Term and any subsequent Renewal Term, unless Customer provides Blackboard, or Blackboard provides Customer, with a written notice to the contrary thirty (30) days prior to the end of the Initial Term or Renewal Term, as applicable.
- Effective Date:** Upon execution of this Order Form unless otherwise indicated in the Pricing Summary above.

C. Payment Terms

- All initial and subsequent payments shall be due Net 30.** Unless otherwise specified, all dollars (\$) are United States currency.
- Customer shall be invoiced for amounts due in respect of the first period of the Initial Term upon execution of this Order Form.**
- Sales Tax:** If applicable, a copy of your Sales Tax Direct Pay Certificate or your Sales Tax Exemption Certificate must be returned with this Order Form.

D. Special Provisions

Expansion of Licensed Use. Blackboard Software is priced annually based upon Blackboard User Bands. Blackboard User Bands are comprised of the FTE (as defined below) of licensing institution PLUS the number of Users in outside programs. Customer agrees that the FTE provided to Blackboard is correct and accurate to the best of its knowledge. For the Software on this Schedule, Customer's license for the Software on this Schedule shall be expanded in increments as indicated below and Blackboard will assess additional license fees for increases in Customer's FTE. Blackboard's User Bands are as follows:

BLACKBOARD LEARN™ SOFTWARE:

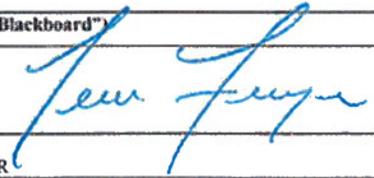
Blackboard Band
1-2000
2,001 to 4,000
4,001 to 8,000
8,001 to 15,000
15,001 to 25,000
25,001 to 50,000

ADDITIONAL bands of 25,000 will be priced separately

Blackboard's assessment of additional license fees will be in accordance with Blackboard's then-current pricing. In the event of growth related to a Customer merger or acquisition, Blackboard's assessment of additional license fees will be in accordance with Blackboards then-current pricing.

2. **BLACKBOARD DEVELOPER'S NETWORK SCHEDULE:** The terms and conditions of the link to the Developer's Network Schedule (<http://agreements.blackboard.com/bbinc/developersnetworkschedule.aspx>) in the Blackboard System Wide Master Terms Agreement between Blackboard and WVNET on behalf of member institutions, dated _____ are incorporated herein and shall include the following:
3. **BLACKBOARD COLLABORATE SCHEDULE:** The terms and conditions of the link to the Collaborate Schedule (<http://agreements.blackboard.com/bbinc/collaborateschedule.aspx>) in the Blackboard System Wide Master Terms Agreement between Blackboard and WVNET on behalf of member institutions, dated _____ are incorporated herein and shall include the following:
4. **BLACKBOARD ANNUAL ANALYTICS SCHEDULE:** The terms and conditions of the link to the annual Analytics Schedule (<http://agreements.blackboard.com/bbinc/analyticsannualschedule.aspx>) in the Blackboard System Wide Master Terms Agreement between Blackboard and WVNET on behalf of member institutions, dated _____ are incorporated herein and shall include the following:

Customer: ____ (WVNET Member Institution)
Signature
Name (printed)
Title (printed)
Date

Blackboard ("Blackboard")
Signature 
Name TESS FRAZIER
Title VICE PRESIDENT
Date